Joint District School Board v. *Kelly*, [1914] A. C. 667, 675; BIRRELL, EMPLOYER'S LIABILITY, 83; Jeremiah Smith, "Sequel to Workmen's Compensation Acts," 27 HARV. L. REV. 235. Their true nature is to be discovered only from an examination of the statutes. The intention of the statutes was to throw on industry the cost of personal injury to workmen, on the theory that this cost is properly a part of the cost of production. See *Borgnis* v. *Falk Co.*, 147 Wis. 327, 374, 133 N. W. 209, 224; Wambaugh, "Workmen's Compensation Acts," 25 HARV. L. REV. 129, 130. See also 28 HARV. L. REV. 307. This being so, the payments, although the liability is contingent, are nevertheless to be classed as operating expenses, whether they are further classed as wages, or insurance, or a combination of the two, or enforced pensions, or taxes, or something given in lieu of wages. They should, therefore, be continued by the receiver. In the actual case this result was the more easily reached because of an unusual provision in the statute, that the payments shall go on while the business is being conducted during bankruptcy or insolvency. See N. J. P. L. 1911, 136.

MORTGAGES — FORECLOSURE UNDER POWER OF SALE — BILL FOR REDEMPTION — SALE PENDING BILL. — During pendency of a bill in the alternative, asking for cancellation because full payment except for usurious interest had been made, or for redemption, the mortgagee foreclosed under a power of sale. *Held*, that the exercise of the power of sale is subject to the equity of the bill. *Carroll* v. *Henderson*, 68 So. 1 (Ala.).

It is often urged that the filing of a bill to redeem will not suspend the power of sale since it would be giving the mortgagor a power to suspend or qualify the contractual right he has vested in the mortgagee, without the mortgagee's consent. *Stevens* v. *Shannahan*, 160 Ill. 330, 43 N. E. 350; 2 JONES, MORTGAGES, § 1906. See dissent in the principal case. It is clear, however, that the jurisdiction of equity to relieve against forfeitures in mortgages is always in substance a question of varying the agreement of the parties. 1 POMEROY, EQUITY JURISPRUDENCE, § 162. The power of sale in mortgages is undoubtedly an attempt to avoid the interference of the chancellor. 2 JONES, MORTGAGES, § 1764. Equity, however, is not completely ousted of its jurisdiction and should prevent an inequitable exercise of the power. Thus in the principal case it is no hardship on the mortgagee to suspend his power of sale "subject to the equity of the bill" since the sale will be invalid only in case the bill shows that it would be inequitable for him to exercise the power. *Ryan* v. *Newcomb*, 125 Ill. 91, 16 N. E. 878. *National Building & Loan Ass'n* v. *Cheatham*, 137 Ala. 395, 34 So. 383.

NEGLIGENCE — PROOF OF NEGLIGENCE — *RES IPSA LOQUITUR*. — The plaintiff while passing along the sidewalk was hit by a board falling from the defendant's house. He showed by his evidence that the board had been loose a long time and just why it fell. *Held*, that it was reversible error to give him the benefit of the "presumption" arising from the doctrine of *res ipsa loquitur*. *McAnany* v. *Shipley*, 176 S. W. 1079 (Kansas City Ct. of App., Mo.).

The doctrine of *res ipsa loquitur* is generally spoken of as warranting a "presumption" of negligence. *Byrne* v. *Boadle*, 2 H. & C. 722; *Price* v. *Metropolitan St. Ry. Co.*, 220 Mo. 435, 456, 119 S. W. 932, 936; 4 WIGMORE, EVIDENCE, § 2509. By this is meant nothing more than that the facts of the injury are sufficient to warrant an inference of negligence, but not that the jury is required to draw one. *Palmer Brick Co.* v. *Chenall*, 119 Ga. 837, 842, 47 S. E. 329, 330. See 2 CHAMBERLAYNE, EVIDENCE, §§ 1026, 1027. The doctrine is simply one of the quantity of circumstantial evidence required to enable the plaintiff to go to the jury. See 20 HARV. L. REV. 228, 229. The facts of the principal case clearly justify the application of the doctrine. *Kearney* v. *London, etc. Ry. Co.*, L. R. 5 Q. B. 411, L. R. 6 Q. B. 759. That the plaintiff showed

additional evidence of the defendant's negligence merely meant that he had more than enough evidence upon which to go to the jury. Under these circumstances an instruction giving him the benefit of the doctrine, even though unnecessary, was harmless. The real fault below seems to have been that the court instructed the jury that the doctrine of *res ipsa loquitur* warranted a "presumption of law" in favor of the plaintiff and from this the jury might well have thought that it was not free to draw any other inference than negligence.

PRESUMPTIONS — EXISTENCE AND EFFECT OF PRESUMPTIONS IN PARTICULAR CASES — OPERATIONS AGAINST STATE OF PRESUMPTION OF LOST GRANT. — In an action in equity to confirm title to real estate the plaintiff showed a 1907 patent from the state, the state having bought at a tax sale in 1872. The defendant claimed under deeds executed in 1884 and 1890, and showed he had been in undisturbed possession for over thirty years. The records prior to 1884 had been burned. *Held*, that the plaintiff's action be dismissed since a grant from the state to defendant would be presumed. *Caruth* v. *Gillespie*, 68 So. 927 (Miss.).

For a discussion of the principles involved in allowing such a presumption to operate against the state, see NOTES, p. 88.

PRESUMPTIONS — SIMILARITY OF LAW OF SISTER STATE — CONSTITUTION. — In a suit for the conversion of the proceeds of a carload of feed, the defendant alleged that he had received the money under a garnishment judgment of a Tennessee justice's court. He gave no evidence as to the law of Tennessee. Under both the Code and Constitution of Iowa, a justice's court could not have had jurisdiction to render such a judgment. *Held*, that the plaintiff cannot recover. *Droge Elevator Co.* v. *W. P. Brown Co.*, 151 N. W. 1048 (Ia.).

In the absence of evidence, most courts presume that the common law of a sister state is similar to that of the forum, provided that they are of common origin. *Cherry* v. *Sprague*, 187 Mass. 113, 72 N. E. 456. *Cf. Peet* v. *Hatcher*, 112 Ala. 514, 21 So. 711. See 4 WIGMORE, EVIDENCE, § 2536. In some states, among them Iowa, this presumption has unfortunately been extended to statutory law. *McMillan* v. *American Express Co.*, 123 Ia. 236, 98 N. W. 629. See A. M. Kales, "Presumption of Foreign Law," 19 HARV. L. REV. 401, 410. In such states, when a statute of another state is proved, it should be presumed to be constitutional. *Fidelity Ins. Co.* v. *Nelson*, 30 Wash. 340, 70 Pac. 961. But where such a statute has not been proved, there is no ground upon which the presumption of an enactment should be refused merely because it happens to appear in the constitution rather than the statute book. *Cook* v. *Chicago, R. I. & P. Ry. Co.*, 78 Neb. 64, 110 N. W. 718. *A fortiori*, it is inconsistent to refuse to presume the uniformity of law when, as in the principal case, both the statutes and the constitution govern the subject. It is submitted that the better rule to be applied in such cases is for the court to take judicial notice of the laws of all the states. Such a rule could only be effected by legislation, but this has been done in a few jurisdictions. See W. VA. CODE, 1906, c. 13, § 4; MISS. CODE, 1906, § 1015.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — CHANGE IN CHARACTER OF LOCALITY AS GROUND FOR DECREE QUIETING TITLE. — A conveyance subject to the restriction that only dwelling houses should be erected on the property was made at a time when the property was in a choice residential district. Since then the neighborhood has been wholly given over to manufacturing of an offensive kind. *Held*, that the restriction is terminated, and that equity will remove it as a cloud on title. *McArthur* v. *Hood Rubber Co.*, 109 N. E. 162 (Mass.).

Courts of equity usually regard agreements restricting the use of land as contract rights. Thus, in the exercise of their discretion, they deny specific